

Internal Revenue Service

Number: **200713018**

Release Date: 3/30/2007

Index Number: 2057.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-141944-06

Date:

December 07, 2006

In Re:

Legend:

Decedent	=
Husband	=
Date 1	=

Dear :

This is in response to your letter dated August 31, 2006, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a qualified family-owned business election under § 2057(b)(1)(B) of the Internal Revenue Code.

The facts submitted and the representations made are as follows. Prior to Decedent's death, Decedent and Husband owned a family business. Prior to December 31, 2003, Decedent died. Husband was appointed as the executor of Decedent's estate.

At the time of Decedent's death, Husband was ill. Husband died shortly after Decedent. Due to his illness, Husband failed to file the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. As a result of the failure to file the Form 706, no election under § 2057(b)(1)(B) was made for Decedent's interest in the family business that was included in her gross estate, and no § 2057(h) agreement was executed.

Shortly after Husband's death, the successor executors for Decedent's estate retained a qualified tax professional to prepare the Form 706 for Decedent's estate. The Form 706 was filed late with the Internal Revenue Service on Date 1. An election under § 2057(b)(1)(B) was made on the Form 706, as filed. The agreement required under § 2057(h) was executed prior to filing the Form 706 with the Service.

The successor executors of Decedent's estate are requesting an extension of time under § 301.9100-3 to make the election under § 2057(b)(1)(B).

Law and Analysis:

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which § 2057 applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent.

Section 2057(a)(2) provides that the deduction allowed by § 2057 shall not exceed \$ 675,000.

Section 2057(b)(1) provides, generally, that § 2057 shall apply to an estate if: (A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States; (B) the executor elects the application of this section and files the agreement referred to in § 2057(h); (C) the sum of the adjusted value of the qualified family-owned business interests described in § 2057(b)(2), plus the amount of the gifts of such interests determined under § 2057(b)(3), exceeds 50 percent of the adjusted gross estate; and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of § 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that for purposes of § 2057 qualified family-owned business interests are interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from the decedent (within the meaning of § 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of § 2057, the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families, and, at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

Section 2057(j) provides that § 2057 will not apply to estates of decedent's dying after December 31, 2003.

Under section 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(ii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control.

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, the successor executors of Decedent's estate are granted an extension of time until Date 1, the date on which the Form 706 for Decedent's estate was filed with the Service, to make the election under § 2057(b)(1)(B).

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express or imply no opinion on whether Decedent's estate qualifies for the deduction under § 2057.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the successor executors of Decedent's estate and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In particular, the burden is on Decedent's estate to establish to the Service's satisfaction that all of the requirements of § 2057 are met.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes